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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

ROBERT STEINBERG, ROBERT N.)	Case No. 06 CV 2628 BEN NLS
ADLER, FRANK V. FINIZIA, BRIAN C.)	
LATZ, GERARD SCORZIELLO, PAUL)	
ROLES, JANEMARIE LENIHAN, DAVID)	FIRST AMENDED CLASS AND
ANDREW GASMAN, ISRAEL HARMAN,)	COLLECTIVE ACTION COMPLAINT
JOHN MASKUBI and VERNON D. BROWN,)	
on behalf of themselves, the general public,)	
and all others similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
MORGAN STANLEY & CO.)	
INCORPORATED and)	
MORGAN STANLEY DW INC.,)	
)	
Defendants.)	

DEMAND FOR JURY TRIAL

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NATURE OF THE ACTION

1. Plaintiffs, Robert Steinberg, a resident of New Jersey, Robert N. Adler, a resident of New Jersey, Frank V. Finizia, a resident of New Jersey, Brian C. Latz, a resident of New Jersey, Gerard Scorziello, a resident of New Jersey, Paul Roles, a resident of New York, Janemarie Lenihan, a resident of Connecticut, David Andrew Gasman, a resident of New York, Israel Harman, a resident of New York, John Maskubi, a resident of New Jersey, and Vernon D. Brown, a resident of California, by and through their attorneys, make the following allegations upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters. Plaintiffs bring this class and collective action on behalf of themselves and all other persons similarly situated who suffered damages as a result of the violations of the Federal Fair Labor Standards Act, New Jersey Labor Laws, New York Labor Laws, Connecticut Labor Laws, California Labor Laws and the labor laws of the other States of the United States and other wrongful conduct and improper labor practices committed by defendants Morgan Stanley & Co. Incorporated, whose address is 1585 Broadway, New York, NY 10036 and Morgan Stanley DW Inc., whose address is 2000 Westchester Avenue, Purchase, NY 10577 (hereafter collectively referred to as “Morgan Stanley” or “defendants”).

2. Plaintiffs bring this lawsuit as a collective action under the Federal Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* and as a class action pursuant to Fed. R. Civ. P. 23. The persons plaintiffs seek to represent are: (a) current and former Financial Advisors (also known as and sometimes referred to herein as “Security Brokers”) that have been employed by Morgan Stanley in the United States outside of the State of California; (b) current and former Financial Advisor Trainees (also known as and sometimes referred to herein as “Security Broker Trainees” or “Trainees”) that have been employed by Morgan Stanley in the United States outside of the State of California; and (c) current and former Producing Branch Managers, Assistant Branch Managers, and Sales Managers that have been employed by Morgan Stanley anywhere in the United States, including California (collectively referred to herein as “Covered Positions”), who were employed by defendants on a commission basis and to whom defendants failed to pay overtime for work performed in excess of 40 hours per week as required by law and/or were subjected to unlawful deductions from their pay by defendants and/or were unlawfully compelled to pay for defendants’ business expenses and/or were

1 unlawfully charged back for commissions and/or the actual value of stock losses allegedly caused by
 2 the employee through simple negligence or no fault of the employee at all.

3 3. The groups and classes that plaintiffs seek to represent include (a) the “Federal
 4 Collective Group” that consists of all individuals who were or are employed by defendants in Covered
 5 Positions described in paragraphs 2(a) and 2(b), above, in the United States of America outside of the
 6 State of California at any time since September 1, 2002, and who were or are employed by defendants
 7 in Covered Positions described in paragraph 2(c), above, in the United States of America, including the
 8 State of California at any time since October 12, 2003, who timely opt-in to any such collective group
 9 (the “Federal Eligibility Period”), (b) the “New Jersey Class” that consists of all individuals, employed
 10 by defendants in Covered Positions in the State of New Jersey at any time since September 1, 1998
 11 (the “New Jersey Class Period”), the “New York Class” that consists of all individuals, employed by
 12 defendants in Covered Positions in the State of New York at any time since September 1, 1998 (the
 13 “New York Class Period”), the “Connecticut Class” that consists of all individuals, employed by
 14 defendants in Covered Positions in the State of Connecticut at any time since September 1, 2002 (the
 15 “Connecticut Class Period”), the “California Class” that consists of all individuals, employed by
 16 defendants in Covered Positions in the State of California at any time since October 12, 2002 and the
 17 “Other States Class” that consists of all individuals, employed by defendants in Covered Positions in
 18 the United States other than the States of New Jersey, New York, Connecticut and California at any
 19 time during the maximum applicable law limitations periods of those jurisdictions in the United States,
 20 dating back from September 1, 2005 with respect to individuals in Covered Positions described in
 21 paragraphs 2(a) and 2(b), above, and dating back from October 12, 2006 with respect to individuals in
 22 Covered Positions described in paragraph 2(c), above (the “Other States Class Period”). The term
 23 “Classes” shall include the New Jersey Class, the New York Class, the Connecticut Class, the
 24 California Class and the Other States Class and the term “Class Periods” shall include the New Jersey
 25 Class Period, the New York Class Period, the Connecticut Class Period, the California Class Period
 26 and the Other States Class Period.

27 4. Defendants violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207, by
 28 failing to pay the Federal Collective Group overtime pay for a work week longer than forty (40) hours.

1 5. Defendants violated the rights of the New Jersey Class under the New Jersey State
2 Wage and Hour Law, N.J.S.A. 34:11-56a through 34:11:56a30 (the “Wage and Hour Law”), and its
3 implementing regulations and the public policy articulated therein, as follows:

4 a. Defendants violated the New Jersey State Wage and Hour Law, N.J.S.A.
5 34:11-56a to 34:11-56a30, which requires employers to pay non-exempt
6 employees overtime at the rate of one and one-half times the employee’s regular
7 salary for all hours worked in excess of forty (40) hours in any given workweek,
8 by failing to pay New Jersey Class
9 members any such overtime compensation.

10 b. Defendants violated the New Jersey State Wage and Hour Law, N.J.S.A.
11 34:11-4.4, which prohibits an employer from “withholding” or “diverting” from
12 wages any sums other than those specifically authorized by that statute, by
13 impermissibly deducting monies from the compensation of class members to pay
14 for support staff and other overhead expenses and/or by refusing to reimburse
15 New Jersey Class members who had incurred such expenses at the direction and
16 insistence of defendants and by charging back earned commissions and stock
17 losses to the New Jersey Class.

18 c. Defendants violated the New Jersey Wage Payment Law, N.J.S.A.
19 34:11-4.3, which provides that when an employee is discharged or terminates
20 employment for any reason, the employer must pay the employee all wages due
21 not later than the regular payday for the pay period during which the employee’s
22 termination, suspension or cessation of employment took place, by failing to
23 tender payment and/or restitution of wages owed or in the manner required by
24 New Jersey law to the New Jersey Class.

25 6. Defendants violated the rights of the New York Class under New York Labor Law and
26 the New York State Labor Department’s Codes, Rules and Regulations (“NYCRR”) as follows:

27 a. Defendants violated 12 NYCRR § 142-2.2 that requires employers to pay
28 non-exempt employees overtime at the rate of one and one-half times the

1 employee's regular salary for all hours worked in excess of 40 hours in any
2 given workweek.

3 b. Defendants violated New York Labor Law Section 193 by impermissibly
4 deducting monies from the compensation of certain New York Class members to
5 pay for support staff and other overhead expenses.

6 7. Defendants violated the rights of the Connecticut Class under Connecticut labor law:

7 a. Under Connecticut law, "any employer who pays or agrees to pay to an
8 employee less than the minimum fair wage or overtime wage shall be deemed in
9 violation of the provisions of this part." Conn. Gen. Stat. § 31-60(a). A "wage"
10 is defined as "compensation for labor or services rendered by an employee,
11 whether the amount is determined on a time, task, piece, commission or other
12 basis of calculation." Conn. Gen. Stat. § 31-71(a)(3).

13 b. In Connecticut, the workweek is forty hours and any time worked above
14 that requires payment at the rate of time and a half. Conn. Gen. Stat. § 31-76(c)
15 ("No employer, except as otherwise provided herein, shall employ any of his
16 employees for a workweek longer than forty hours, unless such employee
17 receives remuneration for his employment in excess of the hours above specified
18 at a rate not less than one and one-half times the regular rate at which he is
19 employed.")

20 8. Defendants violated the rights of the California Class under California Law, as follows:

21 a. Defendants committed an act of unfair competition in violation of the
22 California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, by
23 violating the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207, by failing to
24 pay the members of the California Class plaintiffs overtime pay for a work week
25 longer than forty (40) hours as hereinafter alleged.

26 b. Defendants committed an act of unfair competition in violation of the
27 California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, by
28 violating Cal. Lab. Code § 2802 by failing to reimburse members of the

1 California Class for necessary business expenses they incurred in the course of
2 their employment.

3 c. Defendants violated California Labor Code § 2802, by failing to
4 reimburse members of the California Class for necessary business expenses they
5 incurred in the course of their employment and those California Class members
6 who are no longer employed by Morgan Stanley are entitled to waiting time
7 penalties pursuant to California Labor Code § 203.

8 9. Defendants violated the rights of the Other States Class as provided under the labor
9 laws of each of the jurisdictions of the United States which provide for a) an overtime payment rate for
10 work in excess of 40 hours, and b) prohibit deductions from wages except for those deductions
11 allowed by law.

12 10. As a result of defendants' violation of the FLSA, New Jersey, New York, Connecticut
13 and Other States Labor Laws, plaintiffs and members of the Federal Collective Group and members of
14 the Classes were illegally and grossly under-compensated for their work.

15 **JURISDICTION AND VENUE**

16 11. This Court has jurisdiction over the claims asserted in this action pursuant to 28 U.S.C.
17 § 1331, federal question jurisdiction, 28 U.S.C. § 1332(d), the Class Action Fairness Act of 2005, and
18 28 U.S.C. § 1367, supplemental jurisdiction of state law claims.

19 12. Venue is proper under 28 U.S.C § 1391(b)(1) and § 1391(c) because the named
20 defendants are resident in this District.

21 **PARTIES**

22 13. During the Federal Eligibility and New Jersey Class Periods plaintiffs Robert Steinberg,
23 Robert N. Adler, Frank V. Finizia, Brian C. Latz and Gerard Scorziello were employed by Morgan
24 Stanley in Covered Positions in the State of New Jersey.

25 14. During the Federal Eligibility and New York Class Periods plaintiffs Paul Roles, David
26 Andrew Gasman, Israel Harman and John Maskubi were employed by Morgan Stanley in Covered
27 Positions in the State of New York.

1 15. During the Federal Eligibility and Connecticut Class Periods plaintiff Janemarie
2 Lenihan was employed by Morgan Stanley in a Covered Position in the State of Connecticut.

3 16. During the Federal Eligibility and California Class Periods plaintiff Vernon D. Brown
4 was employed by Morgan Stanley in a Covered Position in the State of California.

5 17. During the Federal Eligibility and Class Periods, defendants Morgan Stanley & Co.
6 Incorporated and Morgan Stanley DW Inc., were and are wholly owned subsidiaries of Morgan
7 Stanley, a corporation, and were and are Delaware corporations with their principal places of business
8 in the State of New York. Morgan Stanley does business in all the jurisdictions of the United States as
9 a NASD registered securities brokerage firm with offices located nation-wide throughout the United
10 States, including the States of California, New Jersey, New York and Connecticut. Morgan Stanley
11 employs thousands of persons in Covered Positions throughout the United States. Morgan Stanley has
12 over 50,000 employees and over 600 offices and at any one time plaintiffs estimate that each of the
13 Classes exceed 500 in total number of Covered Positions and far exceed that amount during the Class
14 Periods.

15 18. Plaintiffs, upon information and belief, allege that during the Federal Eligibility and
16 Class Periods, each defendant was the agent of the other defendant, and in performing the acts alleged
17 in this Complaint was acting within the course and scope of that agency and any reference to
18 “defendant” or “defendants” shall mean “defendants and each of them.” Defendants are individually,
19 jointly and severally liable as the employers of the plaintiffs and each plaintiff class member because
20 each defendant directly or indirectly, or through an agent or any other person, employed or exercised
21 control over the wages, hours and working conditions of plaintiffs.

22 **CLASS AND COLLECTIVE ACTION ALLEGATIONS**

23 19. Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C. Latz, Gerard
24 Scorziello, Paul Roles, David Andrew Gasman, Israel Harman, John Maskubi, Janemarie Lenihan and
25 Vernon D. Brown bring this action on behalf of themselves, and the Federal Collective Group pursuant
26 to the Fair Labor Standards Act, § 216(b) and on behalf of themselves and the New Jersey, New York,
27 Connecticut, California and Other States Classes pursuant to Fed. R. Civ. P. 23.

28 20. Plaintiffs are informed and believe that there are thousands of members of the New

Jersey, New York, Connecticut, California and Other States Classes and thousands of members of the Federal Collective Group, and each Class is so numerous that joinder is impractical.

21. There is a well-defined community of interest in the questions of law and fact affecting the Federal Collective Group and the Classes as a whole. The questions of law and fact common to the Federal Collective Group and to each of the Classes predominate over questions which may affect only individual members of the Federal Collective Group and each of the Classes, including the following:

a. Whether defendants failed to adequately compensate the members of the Federal Collective Group for overtime hours worked as required by the FLSA, 29 U.S.C. § 207, and failed to adequately compensate the members of the New Jersey, New York, Connecticut, California and Other States Classes for overtime hours worked as required by New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a through 34:11:56a30, 12 NYCRR § 142-2.2, Conn. Gen. Stat. § 31-76(c), California Labor Code §§ 203 and 2802 and as required by the labor laws of the Other States, because plaintiffs and members of the Federal Collective Group and the Classes are not exempt employees under the FLSA or New Jersey State Wage and Hour Law, NY Labor Law and 12 NYCRR § 142-2.2, Connecticut General Statute § 31-76(i), the California Labor Code or the labor laws of the Other States.

b. Whether defendants wrongfully deducted monies from the New Jersey, New York, Connecticut, California and Other States Class members' wages and/or otherwise required New Jersey, New York, Connecticut, California and Other States Class members to pay for support staff and other overhead expenses and for reversed trades in violation of New Jersey State Wage and Hour Law, N.J.S.A. 34:11-4.4, New York Labor Law § 193, Connecticut General Statute § 31-71(e), California Labor Code §§ 203 and 2802 and the labor laws of the Other States.

1 c. Whether defendants violated the New Jersey Wage Payment Law,
2 N.J.S.A. 34:11-4.3, which provides that when an employee is discharged or
3 terminates employment for any reason, the employer must pay the employee all
4 wages due not later than the regular payday for the pay period during which the
5 employee's termination, suspension or cessation of employment took place, by
6 failing to tender payment and/or restitution of wages owed or in the manner
7 required by New Jersey law to the New Jersey Class.

8 d. Whether the California Class members who are no longer employed by
9 Morgan Stanley are entitled to waiting time penalties pursuant to California
10 Labor Code § 203.

11 e. Whether defendants committed acts of unfair competition in violation of
12 the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, by
13 violating the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207, by failing to
14 pay the members of the California Class plaintiffs overtime pay for a work week
15 longer than forty (40) hours as hereinafter alleged and by violating Cal. Lab.
16 Code § 2802 by failing to reimburse members of the California Class for
17 necessary business expenses they incurred in the course of their employment.

18 f. Whether the members of the Federal Collective Group and the Classes
19 have been damaged and, if so, the extent of such damages.

20 22. As employees of defendants, which failed to adequately compensate plaintiffs for
21 overtime hours worked as required by law, and improperly charged them for expenses, plaintiffs are
22 asserting claims that are typical of the claims of the Federal Collective Group and the Classes.
23 Plaintiffs will fairly and adequately represent and protect the interests of the Federal Collective Group
24 and the Classes and have no interests antagonistic to those of the other members of the Federal
25 Collective Group and the Classes. Plaintiffs have retained attorneys who are competent and
26 experienced in the prosecution of class and collective action litigation.

27 23. Plaintiffs and other members of the Federal Collective Group and the Classes have
28 suffered damages as a result of defendants' wrongful conduct. Because of the size of the claims of the

individual members of the Federal Collective Group and the Classes, few, if any, members of the Federal Collective Group and the Classes could afford to seek legal redress for the wrongs complained of herein. A collective and class action is, therefore, superior to other available methods for the fair and efficient adjudication of the controversy. Absent a collective and class action, the members of the Federal Collective Group and the Classes likely will not obtain redress of their injuries and defendants will retain the proceeds of their violations of FLSA § 207, N.J.S.A. §§ 34:11-56a through 34:11:56a30 and 34:11-4.4, New York Labor Law § 193 and 12 NYCRR § 142-2.2, Conn. Gen. Stat. §§ 31-76(c) and 31-71(e), California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 and Cal. Lab. Code §§ 203 and 2802 and the labor laws of the Other States.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

24. Defendants sold and sell securities and other financial products with offices nationwide.

25. Plaintiffs, Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C. Latz, Gerard Scorziello, Paul Roles, David Andrew Gasman, Israel Harman, John Maskubi and Janemarie Lenihan were inside sales persons whom defendants paid on a commission basis without any premium for overtime pay as required by law.

26. Plaintiff Vernon D. Brown was an Assistant Branch Manager. Despite his title, plaintiff Brown performed almost no managerial work. Instead, plaintiff Brown's duties and compensation were nearly identical to those of a Financial Advisor. Plaintiff Brown's primary duty was selling financial products, and he was compensated almost entirely by sales commissions.

27. Defendants required every Securities Broker member of the Classes to pay additional wages to the brokers' assistant(s) for doing the business of defendant.

28. Defendants also charged and/or refused to compensate the members of the Classes for other costs of doing business.

29. If a customer challenged the transactions done for their benefit by the Securities Broker members of the Classes, defendants would deduct the amount of any loss from the commissions due the securities broker both for the actual losses incurred by the customer and any commission paid on that transaction.

30. Neither plaintiffs nor the members of the Classes were or are part of any group exempt from the overtime requirements of Federal, New Jersey, New York, Connecticut, California or Other States' laws.

31. Members of the New Jersey, New York, Connecticut and California Classes were and are not "professionals" and did not perform executive or administrative functions as defined by New Jersey Wage & Hour Regulations §§ 12:56-7.1 through 7.6, 12 NYCRR §§ 142.2.14(c)(4)(iii) and 142-2.14(c)(4)(i) and 142-2.14(c)(ii), Connecticut regulation §31-60-14 and California Labor Code and regulations and orders implementing the Code and the labor laws of Other States.

32. Plaintiffs and other members of the Classes were not and are not outside salesmen as defined in the FLSA and under New Jersey, New York, Connecticut and California labor laws and the labor laws of Other States, since they performed their sales functions inside defendants' offices.

FIRST CLAIM FOR RELIEF
Restitution for Failure to Pay Overtime to the Federal Collective Group
(Violation of FLSA § 207)

33. Plaintiffs incorporate by reference all of the allegations of all prior paragraphs as though fully set forth herein.

34. Section 207(a)(1) of the Federal Fair Labor Standards Act provides in pertinent part:

Except as otherwise provided in this section, no employer shall employ any of his employees who in any work week is engaged in commerce or in the production of goods for commerce, for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

29 U.S.C. § 207(a)(1) (2005).

35. Section 207(i) of the Federal Fair Labor Standards Act provides for certain exemptions from the above provision:

No employer shall be deemed to have violated subsection (a) [of this section - mandate to compensate employees for overtime] by employing any employee of a **retail or service establishment** for a workweek in excess of the applicable work week specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 6 [29 U.S.C. § 206],

and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services.

29 U.S.C. § 207(i) (2005) (emphasis added).

1 36. The Section 207(i) exemption does not apply to the Federal Collective Group herein
 2 because brokerage houses do not qualify as “retail or service establishments.” Section 779.317 of the
 3 Secretary of Labor’s regulations provides a “partial list of establishments to which the retail concept
 4 [and thus the section 207(i) exemption] does not apply.” 29 U.S.C. § 779.317 (2005). Included in that
 5 list are “brokers, custom house; freight brokers; stock or commodity brokers, [and] ... securities
 6 dealers.” *Id.*

7 37. Section 213(a)(1) of the Federal Fair Labor Standards Act provides that the overtime
 8 pay requirement does not apply to:

9 any employee employed in a bona fide **executive, administrative, or**
 10 **professional capacity** (including any employee employed in the capacity of
 11 academic administrative personnel or teacher in elementary or secondary
 12 school), or in the capacity of **outside salesman** (as such terms are defined and
 13 delimited from time to time by regulations of the Secretary, subject to the
 14 provisions of the Administrative Procedure Act [5 U.S.C. §§ 551 *et seq.*] except
 15 than [*sic*] an employee of a retail or service establishment shall not be excluded
 16 from the definition of employee employed in a bona fide executive or
 17 administrative capacity because of the number of hours in his work week which
 18 he devotes to activities not directly or closely related to the performance of his
 19 executive or administrative activities, if less than 40 per centum of his hours
 20 worked in the work week are devoted to such activities).

21 29 U.S.C. § 213(a)(1) (2005) (emphasis added).

22 38. The Section 213(a)(1) exemption for employees employed in a professional capacity is
 23 inapplicable because, as the courts have held, securities brokers who work on commission, are not
 24 employed in a bona fide professional capacity.

25 39. The professional exemption does not apply to the plaintiffs or to the members of the
 26 Federal Collective Group because the status of a securities broker is not a recognized profession in a
 27 field of science or learning, and the skills are acquired through experience and an apprenticeship and
 28 the passage of a series of exams through self-study rather than at any institution of higher learning.

 40. In addition, for an occupation to qualify for the professional exemption, the occupation
 must be generally recognized as a profession requiring advanced knowledge in a field of science or
 learning customarily acquired by a prolonged course of specialized intellectual instruction. Although
 many members of the Federal Collective Group hold advanced degrees in business, many do not, and
 the degree in business is a general degree rather than a degree related to work as a stock broker. There

1 is no generally recognized advanced degree from an institution of higher academic learning related to
2 work as a stock broker, and even if there were, it is not generally required to have such a degree in
3 order to become a securities broker employee of defendants.

4 41. The Section 213(a)(1) exemption for employees employed in the capacity of outside
5 salesman does not apply because neither plaintiffs nor the members of the Federal Collective Group
6 were, or are, outside salespersons because plaintiffs and the other members of the Federal Collective
7 Group were employed at the defendants' places of business.

8 42. The Section 213(a)(1) exemption for executive or administrative personnel does not
9 apply to members of the Federal Collective Group since they were not responsible for the supervision
10 of other employees of defendants.

11 43. The Federal Collective Group under the Fair Labor Standards Act includes all securities
12 broker employees of defendants in the United States.

13 44. For purposes of the Fair Labor Standards Act, the employment practices of defendants
14 were and are uniform throughout the United States in all respects material to the claims asserted in this
15 Complaint.

16 45. There are no other exemptions applicable to plaintiffs and/or to members of the Federal
17 Collective Group.

18 46. Plaintiffs and the other members of the Federal Collective Group, either regularly or
19 from time to time, worked more than 40 hours per week for defendants, and received no premium pay
20 for hours worked in excess of 40 hours per week.

21 47. In committing the wrongful acts alleged to be in violation of the Fair Labor Standards
22 Act, defendants acted willfully in that it knowingly, deliberately and intentionally failed to pay
23 overtime to plaintiffs and members of the Federal Class.

24 48. As a result of defendants' failure to pay overtime, plaintiffs and the members of the
25 Federal Collective Group were damaged in an amount to be proved at trial.

26 49. Therefore, plaintiffs demand that they and the members of the Federal Collective Group
27 be paid overtime compensation as required by the FLSA for every hour of overtime worked in any
28 work week for which they were not compensated, plus interest and attorneys' fees as provided by law.

SECOND CLAIM FOR RELIEF
(Failure to Pay Overtime to Securities Brokers As Required By New Jersey Law)
(Violation of N.J.S.A. 34:11-56a to 34:11-56a30)

50. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set forth herein in full.

51. The New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a to 34:11-56a30, and its implementing regulations, provides that any work in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half (1 ½) times the regular rate of pay for an employee.

52. New Jersey overtime law exempts from these overtime premium pay requirements certain “white collar” employees employed in a bone fide executive, administrative or professional capacity who are paid on a salary basis not less than a certain dollar amount.

53. Neither plaintiffs nor members of the New Jersey Class are part of any group exempt from the overtime requirements of New Jersey law.

54. The New Jersey Wage and Hour Regulations, specifically N.J.A.C. 12:56-7.6, provide that “[e]mployees in a bona fide executive, administrative, or professional capacity and outside sales persons shall be exempt from the overtime requirements of [the New Jersey Wage and Hour Regulations] - - .”

55. The professional exemption does not apply to the plaintiffs or to the members of the New Jersey Class pursuant to N.J.A.C. 12:56-7.3 because the status of a securities broker is not a recognized profession in a field of science or learning or artistic endeavor, and the skills are acquired through experience and an apprenticeship and the passage of a series of exams through self-study rather than at any institution of higher learning.

56. In addition, under N.J.A.C. 12:56-7.3, for an occupation to qualify for the professional exemption, the occupation must be generally recognized as a profession requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. Although many members of the New Jersey Class hold advanced degrees in business, many do not, and the degree in business is a general degree rather than a degree related to work as a stock broker. There is no generally recognized advanced degree from an institution of higher academic

1 learning related to work as a stock broker, and even if there were, it is not generally required to have
2 such a degree in order to become a securities broker employee of defendants.

3 57. Pursuant to N.J.A.C. 12:56-7.4, the exemption under N.J.A.C. 12:56-7.6 for employees
4 employed in the capacity of outside salesman does not apply because neither plaintiffs nor the
5 members of the New Jersey Class were, or are, outside salespersons because plaintiffs and the other
6 members of the New Jersey Class were employed at the defendants' places of business.

7 58. Pursuant to N.J.A.C. 12:56-7.1 and 7.2, the exemption under N.J.A.C. 12:56-7.6 for
8 executive or administrative personnel does not apply to plaintiffs and the other members of the New
9 Jersey Class since, among other reasons, their primary duties were not in management and they were
10 not responsible for the supervision of other employees of defendants, nor were their primary duties
11 performance of office work related to management or the internal business operations of defendants.

12 59. Plaintiffs and members of the New Jersey Class, either regularly or from time to time,
13 worked more than 40 hours per week for defendants, and received no premium pay for hours worked
14 in excess of 40 hours per week, and thereby suffered damages.

15 60. Therefore, Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C.
16 Latz and Gerard Scorziello demand that they and all members of the New Jersey Class be paid
17 overtime compensation as required by the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a to
18 34:11-56a30 for every hour of overtime worked in any workweek during the New Jersey Class Period
19 for which they were not compensated, plus interest and attorneys fees as provided by law.

20 **THIRD CLAIM FOR RELIEF**
21 **(Failure to Pay Overtime to Securities Brokers As Required By New York Law)**
22 **(Violation of 12 NYCRR § 142-2.2)**

23 61. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set
24 forth herein in full.

25 62. 12 NYCRR § 142-2.2 (2005), provides:

26 An employer shall pay an employee for overtime at a wage rate of one and one-
27 half times the employee's regular rate in the manner and methods provided in
28 and subject to the exemptions of Section [20]7 and Section [2]13 of 29 U.S.C.
201 et seq., the Fair Labor Standards Act of 1938 as Amended, provided,
however that the exemptions set forth in Section [2]13(a)(2) and [2]13(a)(4)
shall not apply. In addition, an employer shall pay employees subject to the
exemptions of Section [2]13 of the Fair Labor Standards Act, as Amended,

except employees subject to Section [2]13(a)(4) of such Act, overtime at a wage rate of one and one-half time the basis minimum hourly rate.

63. New York Law requires the payment of overtime compensation at one and one half times the regular rate for all hours worked in excess of 40 hours a week.

64. New York overtime law exempts from these overtime premium pay requirements certain “white collar” employees employed in a bone fide executive, administrative or professional capacity who are paid on a salary basis not less than a certain dollar amount.

65. An employee is defined as “any individual employed, suffered or permitted to work by an employer in any employment.” 12 NYCRR § 142-2.14 (2005).

66. Plaintiffs Paul Roles, David Andrew Gasman, Israel Harman and John Maskubi and all other members of the New York Class employed by defendants during the New York Class Period, either regularly or from time to time, work and/or worked more than 40 hours per week, and were, or are, compensated on either (i) a straight commission basis with no base salary, or (ii) entirely on salary, in either case with no premium pay for hours worked in excess of 40 hours.

67. Plaintiffs are not part of any group exempt from the overtime requirements of New York law.

68. Certain securities brokers are categorized as “commission salesmen” employees under the New York Labor Law. “Commission salesman” is defined as “any employee whose principal activity is the selling of any goods, wares, merchandise, services, real estate, securities, insurance or any article or thing and whose earnings are based in whole or in part on commissions.” N.Y. Lab. Law §190.

69. The commissions of “commission salesmen” are “wages” within the meaning of New York Labor Law § 190 and, therefore, subject to the overtime pay requirements of 12 NYCRR § 142-2.2.

70. Members of the New York Class, those compensated on a commission basis as well as salaried broker trainees, are thus “employees” who receive “wages” within the meaning of New York Labor Law §§ 190(1) and 12 NYCRR § 142-2.2.

71. Under 12 NYCRR § 142-2.2, members of the New York Class, those compensated on a commission basis as well as salaried broker trainees, are not subject to the Section 207 or Section 213

1 exemptions of the Federal Fair Labor Standards Act.

2 72. In addition, 12 NYCRR § 142-2.14 limits the administrative exemption to employees
3 whose primary duty consists of the “performance of office or non manual field work directly related to
4 management policies or general operations *of such individual's employer*” and, unlike the federal
5 regulations, does not include employees whose primary duty is to perform support functions for the
6 employer’s *customers*.

7 73. Employees whose primary duty is to perform support services for the defendants’
8 customers, for which defendants are paid, are production employees not entitled to the administrative
9 exemption. Specifically, the last sentence of 29 C.F.R. § 541.203(b) states that “an employee whose
10 primary duty is selling financial products does not qualify for the administrative exemption.”

11 74. A defendant bears the burden of proving that its employees fall within an exemption
12 enumerated in 12 NYCRR § 142-2.14.

13 75. Because the provisions of the exemption are cumulative, each of the prerequisites must
14 be satisfied, and thus, the absence of one of the requirements for the exemption ends the inquiry.
15 Plaintiffs and members of the New York Class do not meet the definition of an administrative
16 employee contained in 12 NYCRR § 142-2.14 because their primary duty does not “consist of the
17 performance of office or non manual field work directly related to management policies or general
18 operations of such individual's employer,” but rather the sale of financial products to the employer’s
19 customers.

20 76. Therefore, Plaintiffs Paul Roles, David Andrew Gasman, Israel Harman and John
21 Maskubi demand that they and all members of the New York Class be paid overtime compensation as
22 required by the New York Labor Law for every hour of overtime worked in any work week for which
23 they were not compensated, plus interest and attorneys fees as provided by law.

24 **FOURTH CLAIM FOR RELIEF**
25 **(Failure to Pay Overtime to Securities Brokers As Required By Connecticut Law)**
26 **(Violation of Connecticut General Statute § 31-60(a), 31-76(c))**

27 77. Plaintiff incorporates by reference all of the allegations of all prior paragraphs as though
28 fully set forth herein.

78. Under Connecticut law, “any employer who pays or agrees to pay to an employee less

1 than the minimum fair wage or overtime wage shall be deemed in violation of the provisions of this
 2 part.” Conn. Gen. Stat. § 31-60(a).

3 79. A “wage” is defined as “compensation for labor or services rendered by an employee,
 4 whether the amount is determined on a time, task, piece, commission or other basis of calculation.”
 5 Conn. Gen. Stat. § 31-71a(3).

6 80. In Connecticut, the workweek is forty hours and any time worked above that requires
 7 payment at the rate of time and a half. Conn. Gen. Stat. § 31-76(c) (“No employer, except as otherwise
 8 provided herein, shall employ any of his employees for a workweek longer than forty hours, unless
 9 such employee receives remuneration for his employment in excess of the hours above specified at a
 10 rate not less than one and one-half times the regular rate at which he is employed.”).

11 81. Plaintiff and the Connecticut Class are not exempt under Connecticut law from the
 12 Connecticut overtime pay laws since they are not executives, administrators, or professionals.
 13 Connecticut General Statute § 31-76i exempts from entitlement to overtime pay “(e) any person
 14 employed in a bona fide executive, administrative or professional capacity as defined in the regulations
 15 of the labor commissioner issued pursuant to section 31-60.” The regulations, at § 31-60-14 define
 16 “employee employed in a bona fide executive capacity” in pertinent part as:

17 any employee (a) whose primary duty consists of the management of the enterprise in
 18 which he is employed or of a customarily recognized department or subdivision thereof;
 19 and (b) who customarily and regularly directs the work of two or more other employees
 20 therein; and (c) who has the authority to hire or fire other employees or whose
 21 suggestions and recommendations as to the hiring or firing and as to the advancement
 22 and promotion or any other change of status of other employees will be given particular
 23 weight; and (d) who customarily and regularly exercise discretionary powers; and (e)
 24 who does not devote more than twenty percent . . . of his hours of work in the workweek
 25 to activities which are not directly and closely related to the performance of the work
 26 described in subdivisions (a) to (d), inclusive, of this section . . . and (f) who is
 27 compensated for his services on a salary basis at a rate not less than . . . one hundred
 28 twenty-five dollars per week [after January 1, 1969]. . . . Any employee who is
 compensated on a salary basis at a rate of not less than one hundred seventy-five dollars
 per week . . . and whose primary duty consists of the management of the enterprise in
 which he is employed or of a customarily recognized department or subdivision thereof,
 and includes the customary and regular direction of the work of two or more other
 employees therein, shall be deemed to meet all of the requirements of this section.

82. There are no other exemptions applicable to Plaintiff Janemarie Lenihan and the other
 members of the Connecticut Class.

1 compensation as required by the laws of the Other States for every hour of overtime worked in any
 2 workweek during the Other States Class Period for which they were not compensated, plus interest
 3 and attorneys fees as provided by law.

4 **SIXTH CLAIM FOR RELIEF**
 5 **(Impermissible Deductions from Wages of the New Jersey Class)**

6 91. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set
 7 forth in full herein.

8 92. The New Jersey State Wage and Hour Law, N.J.S.A. 34:11-4.4 prohibits an employer
 9 from “withholding” or “diverting” from wages any sums other than those specifically authorized by
 10 that statute. Nowhere in the statute is an employer, such as Morgan Stanley, authorized to deduct
 11 from plaintiffs’ pay, or the pay of similarly situated employees, wages payable to other employees of
 12 defendant.

13 93. Nevertheless, defendants required Plaintiffs Robert Steinberg, Robert N. Adler, Frank
 14 V. Finizia, Brian C. Latz and Gerard Scorziello and members of the New Jersey Class to pay
 15 additional sums to defendants’ other employees for their labor necessary to complete defendants’
 16 work.

17 94. As such, Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C. Latz
 18 and Gerard Scorziello and the New Jersey Class members incurred expenditures and losses in direct
 19 consequence of the discharge of their duties, or of their obedience to the directions of their employer
 20 which have not yet been reimbursed by defendants.

21 95. Thus, Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C. Latz and
 22 Gerard Scorziello and the members of the New Jersey Class were forced to contribute to the capital
 23 and expenses of the defendants’ business which contributions must be refunded by defendants to each
 24 plaintiff class member.

25 96. Therefore, Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C.
 26 Latz and Gerard Scorziello demand on behalf of themselves and on behalf of the members of the New
 27 Jersey Class, reimbursement for expenditures or losses incurred in direct consequence of the discharge
 28 of their duties, or of their obedience to the directions of their employers, plus return of all coerced

1 investments in the business of the employers, with interest and attorneys fees.

2 **SEVENTH CLAIM FOR RELIEF**
 3 **(Impermissible Deductions from Wages of the New York Class)**

4 97. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set
 5 forth in full herein.

6 98. New York's Labor Law expressly prohibits an employer from making unauthorized
 7 deductions from employees' wages. Nowhere in said statute is an employer, such as defendants,
 8 authorized to deduct from plaintiffs' pay, or the pay of similarly situated employees, wages payable to
 9 other employees of defendants.

10 99. New York Labor Law § 193 provides:

11 **Deductions from wages:**

12 1. No employer shall make any deductions from the wages of an
 13 employee, except deductions which:

14 a. are made in accordance with the provisions of any law or
 15 any rule or regulation issued by any governmental agency; or

16 b. are expressly authorized in writing by the employee and
 17 are for the benefit of the employee; provided that such authorization is kept on
 18 file on the employer's premises. Such authorized deductions shall be limited to
 19 payments for insurance premiums, pension or health and welfare benefits,
 20 contributions to charitable organizations, payments for United States bonds,
 21 payments for dues or assessments to a labor organization, and similar payments
 22 for the benefit of the employee.

23 2. No employer shall make any charge against wages, or require an
 24 employee to make any payment by separate transaction unless such charge or
 25 payment is permitted as a deduction from wages under the provisions of
 26 subdivision one of this section.

27 N.Y. Lab. Law § 193 (Consol. 2004).

28 100. Thus, Section 193 prohibits deductions from employees' wages unless the deductions
 are (1) "expressly authorized" by and "for the benefit of the employee" and, (2) are limited to the
 enumerated categories of permissible deductions.

101. Wages are defined as "the earnings of an employee for labor or services rendered,
 regardless of whether the amount of earnings is determined on a time, piece, commission or other
 basis." N.Y. Lab. Law § 190(1) (Consol. 2004).

102. Defendants made unlawful deductions from the wages paid to plaintiffs and the New

1 York Class for expenses which were, as a matter of law, the employer's overhead expenses, including
 2 (a) deductions of the wages paid to "cold callers" hired to obtain business for defendants, (b)
 3 deductions for amounts paid to the Security Broker's secretary or sales assistant(s) for doing the
 4 business of defendants and communicating with customers, (c) deductions for marketing materials
 5 promoting defendants' business, and (d) deductions for "broken trades." A "broken trade" is where a
 6 customer challenged a transaction done for his benefit by the Securities Broker and the trade was
 7 cancelled. Where the cancellation of the transaction resulted in a loss, defendants deducted the amount
 8 of any loss from the commissions due the Securities Broker, both for the actual losses incurred by the
 9 customer and any commission paid on that transaction; however, if the cancellation of the transaction
 10 resulted in a gain on the transaction, defendants retained the gain for their own benefit.

11 103. As such, Plaintiffs Paul Roles, David Andrew Gasman, Israel Harman and John
 12 Maskubi and the other members of the New York Class had expenditures and losses which were
 13 incurred in direct consequence of the discharge of their duties, or of their obedience to the directions of
 14 their employers which have not yet been reimbursed by defendants.

15 104. Thus, the described deductions violate N.Y. Lab. Law § 193 because they are neither
 16 for the benefit of the employee nor of a similar type to the deductions allowable under the statute.

17 105. Therefore, Plaintiffs Paul Roles, David Andrew Gasman, Israel Harman and John
 18 Maskubi demand on behalf of themselves and the other members of the New York Class,
 19 reimbursement for all deductions, expenditures or losses deducted or incurred in violation of N.Y. Lab.
 20 Law § 193, with interest and attorneys fees.

21 **EIGHTH CLAIM FOR RELIEF**
 22 **(Impermissible Deductions from Wages of the Connecticut Class)**
 23 **(Connecticut General Statute § 37-71(e))**

24 106. Plaintiffs incorporate by reference all of the allegations of all prior paragraphs as though
 25 fully set forth herein.

26 107. Plaintiff Janemarie Lenihan and the other members of the Connecticut Class also bring
 27 claims for improper deductions from wages. Under Connecticut law "[n]o employer may withhold or
 28 divert any portion of an employee's wages unless (1) the employer is required or empowered to do so
 by state or federal law, or (2) the employer has written authorization from the employee for deductions

on a form approved by the commissioner, or (3) the deductions are authorized by the employee, in writing, for medical, surgical or hospital care or service, without financial benefit to the employer and recorded in the employer's wage record book." Conn. Gen. Stat. § 31-71(e).

108. In this case, defendants improperly withheld compensation for related administrative expenses.

109. Therefore, Plaintiff Janemarie Lenihan demands that defendants reimburse any members of the Connecticut Class from whom it improperly withheld a portion of their compensation in order to pay overhead expenses of the defendants, plus interest and attorneys' fees as provided by law.

NINTH CLAIM FOR RELIEF
(Impermissible Deductions from Wages of the Other States Class)

110. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set forth in full herein.

111. To the extent that the laws of the Other States prohibit an employer from "withholding" or "diverting" from wages any sums other than those specifically authorized by law, an employer, such as Morgan Stanley, is and was not authorized to deduct from the pay of members of the Other States Class, wages payable to other employees of defendants.

112. Defendants required members of the Other States Class to pay additional sums to defendants' other employees for their labor necessary to complete defendants' work.

113. As such, members of the Other States Class incurred expenditures and losses in direct consequence of the discharge of their duties, or of their obedience to the directions of their employer which have not yet been reimbursed by defendants.

114. Thus, the described deductions were unlawful because they are neither for the benefit of the employee nor of a similar type to the deductions allowable under the laws of the Other States.

115. Therefore, members of the Other States Class demand reimbursement for all deductions, expenditures or losses deducted or incurred in violation of the laws of the Other States, with interest and attorneys fees.

TENTH CLAIM FOR RELIEF
(Chargebacks)

116. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set forth in full herein.

117. Defendants, as a regular business practice, wrongfully charged back both commissions and the actual value of the stock losses allegedly caused by a Securities Broker through simple negligence or no fault of the Securities Broker, including chargebacks for “broken trades.” A “broken trade” is where a customer challenged a transaction done for his benefit by the Securities Broker and the trade was cancelled. Where the cancellation of the transaction resulted in a loss, defendants deducted the amount of any loss from the commissions due the Securities Broker, both for the actual losses incurred by the customer and any commission paid on that transaction; however, if the cancellation of the transaction resulted in a gain on the transaction, defendants retained the gain for their own benefit..

118. Such charge backs are prohibited by the Labor Laws of New Jersey, New York, Connecticut and the Other States.

119. Defendants systematically underpaid its Securities Broker employees by holding back a significant portion of commissions for its own purposes to pay others, and then either paying the wages later than the time required by the law or simply not paying them at all.

120. Defendants did not pay plaintiffs or the other members of the New Jersey, New York, Connecticut and Other States Classes all wages due as required by law, and still has not paid such amounts which remain due and owing and as a result the plaintiffs and members of the Classes have suffered damages.

121. Therefore, plaintiffs demand an accounting and payment of all wages due to them and to the other members of the New Jersey, New York, Connecticut and Other States Classes, plus interest and attorneys fees allowed by law.

ELEVENTH CLAIM FOR RELIEF
(Penalties for Violation of N.J.S.A. 34:11-4.3)

122. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set forth in full.

123. The New Jersey Wage Payment Law, N.J.S.A. 34:11-4.3, provides that when an employee is discharged or terminates employment for any reason, the employer must pay the employee all wages due not later than the regular payday for the pay period during which the employee's termination, suspension or cessation of employment took place.

124. Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C. Latz and Gerard Scorziello and many of the members of the New Jersey Class have terminated their employment with defendants and defendants have not tendered payment and/or restitution of wages owed or in the manner required by New Jersey law to them and have thereby caused plaintiffs and such members of the New Jersey Class to suffer damages.

125. Therefore, Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C. Latz and Gerard Scorziello, on behalf of themselves and members of the New Jersey Class, demand appropriate penalties for defendants' failure to timely pay wages during the New Jersey Class Period.

TWELFTH CLAIM FOR RELIEF
(Unfair Competition-Cal. Bus. & Prof. Code § 17200-Denial of Overtime Pay)

126. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set forth in full.

127. The Fair Labor Standards Act, 29 U.S.C. § 201 et seq. states that an employee must be paid overtime for any hours worked over 40 per week, unless that employee is exempt. Plaintiff Vernon D. Brown and the other members of the California Class are not exempt because, *inter alia*: 1) their primary duty is selling financial products; 2) they are not paid on a salary basis; and 3) Morgan Stanley is not a "retail or service establishment."

128. California Business & Professions Code § 17200 et seq. proscribes any unlawful, unfair or fraudulent business act or practice. Morgan Stanley's failure to pay members of the California Class overtime wages due under the FLSA constitutes an unlawful business act or practice, in violation of Business & Professions Code § 17200, et seq.

129. Pursuant to California Business & Professions Code § 17203, plaintiff Vernon D. Brown requests an order requiring Morgan Stanley to make restitution of all FLSA overtime wages due to the California Class, in an amount to be proved at trial.

THIRTEENTH CLAIM FOR RELIEF
(Unfair Competition-Cal. Bus. & Prof, Code § 17200- Restitution of Business Expenses)

130. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set forth in full.

131. Morgan Stanley failed to reimburse members of the California Class for necessary business expenses they incurred in the course of their employment.

132. Morgan Stanley's failure to reimburse these expenses violates California Labor Code § 2802, which is an act of unfair competition under Business & Professions Code § 17200, *et seq.*

133. Pursuant to California Business & Professions Code § 17203, plaintiff Vernon D. Brown requests an order requiring Morgan Stanley to make restitution of all necessary business expenses incurred by the members of the California Class, in an amount to be proved at trial.

FOURTEENTH CLAIM FOR RELIEF
(Cal. Labor Code §§ 203, 2802-Restitution of Business Expenses, Waiting Penalties)

134. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set forth in full.

135. Pursuant to California Labor Code § 2802, the members of the California Class are entitled to reimbursement of their business expenses, plus interest, attorney's fees, and costs, in amounts to be proved at trial. In addition, those California Class members who are no longer employed by Morgan Stanley are entitled to waiting time penalties pursuant to California Labor Code § 203.

FIFTEENTH CLAIM FOR RELIEF
(Breach of Contract)

136. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set forth in full herein.

137. The conduct of the plaintiffs and members of the Classes and the defendants, including the promise of the defendants to pay plaintiffs and members of the Classes all amounts due to them in compliance with state and/or federal law in exchange for the performance by plaintiffs and the members of the Classes of the duties of their employment, including their performance of their duties as Securities Brokers and as employees in Covered Positions of defendants, constitutes a valid contract between the parties.

1 138. This contract was supported by good and adequate consideration.

2 139. Plaintiffs and the other members of the Classes fully performed all of the duties and
3 obligations imposed upon them pursuant to their contracts with Morgan Stanley. The conduct of
4 defendants in failing to pay the plaintiffs and the other members of the Classes all of the overtime
5 wages due to them and other benefits, constitutes a breach of the contract between the parties and
6 caused plaintiffs and members of the Classes to suffer damages.

7 WHEREFORE, in accordance with all of the above claims in the First through Fifteenth
8 Claims for Relief, inclusive, plaintiffs demand judgment in their favor and in favor of the other
9 members of the Federal Collective Group and the Classes and against defendants, individually, jointly
10 and severally, for:

11 A. Compensatory damages, according to proof at trial, including compensatory damages
12 and restitution for both regular and overtime compensation due plaintiffs and the other members of the
13 Federal Collective Group and the Classes, during the applicable Federal Eligibility Period and the
14 Class Periods plus interest thereon at the statutory rate;

15 B. Restitution and reimbursement to plaintiffs and to the other members of the New
16 Jersey, New York, Connecticut, California and Other States Classes of all employee expenses not
17 reimbursed by defendants, during the New Jersey, New York, Connecticut, California and Other States
18 Class Periods, including: expenses incurred to pay assistants and other employees of defendants, all
19 commissions charged back to plaintiffs and to the other members of the New Jersey, New York,
20 Connecticut and Other States Classes and/or all other monies either unlawfully deducted from wages
21 or required to be paid back directly by defendants, including any gain on any incomplete or undone
22 trades;

23 C. An order temporarily, preliminarily and permanently enjoining and restraining
24 defendants, from engaging in similar unlawful conduct as set forth herein;

25 D. An order requiring defendants to provide an accounting of all wages and all sums

26 E. unlawfully charged back and withheld from compensation due to plaintiffs and the
27 other members of the Federal Collective Group and the Classes;
28

1 F. Imposition of a constructive trust upon the assets of the defendants to the extent of the
2 sums due to plaintiffs and to the other members of the Federal Collective Group and Classes herein;

3 G. Declaratory relief including declarations setting forth the rights of plaintiffs and the
4 members of the Federal Collective Group and the Classes, as alleged in this Complaint and setting
5 forth the defendants' violations of those rights;

6 H. Interest;

7 I. Reasonable attorneys fees and costs of suit; and

8 J. Such other and further relief as the Court deems just and equitable; however,

9 K. No penalties (statutory or otherwise), liquidated damages or punitive damages of any
10 kind under New York law are sought in this action and are expressly waived.

11 Plaintiffs demand a trial by jury for all matters so triable.

12 Dated: March 7, 2007

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FREEMAN & HERZ LLP
14 SCHATZ & NOBEL, P.C.

15 By Rachele R. Rickert
16 RACHELE R. RICKERT

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Attorneys for Plaintiffs

DECLARATION OF SERVICE

I, Maureen Longdo , the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested in the within action; that declarant's business address is 750 B Street, Suite 2770, San Diego, California 92101.

2. That on March 7, 2007, declarant served the FIRST AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT via the CM/ECF System to the parties who are registered participants of the CM/ECF System.

3. That on March 7, 2007, declarant served the parties who are not registered participants of the CM/ECF System, via United States Mail.

4. That there is regular communication between the parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of March 2006, at San Diego, California.


MAUREEN LONGDO

MORGAN STANLEY

Service List -- November 29, 2006

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MORGAN STANLEY

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